



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

DAVID R. CLEVELAND
IPLM GROUP, P.A.
POST OFFICE BOX 18455
MINNEAPOLIS, MN 55418

COPY MAILED

NOV 29 2005

OFFICE OF PETITIONS

In re Application of :
Kelton et al. :
Application No. 09/893,223 : ON PETITION
Filed: June 27, 2001 :
Attorney Docket No. :
163.1062USD1 :

This is a decision on the petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim for the benefit of a the prior-filed application, filed August 2, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

This Petition is hereby dismissed.

37 CFR 1.78(a)(1) provides that "[a] nonprovisional application may claim an invention disclosed in one or more prior filed copending nonprovisional applications or copending international applications claiming the United States of America."

In this instance, the above-identified application was filed on June 27, 2001. The application for which the benefit is sought, number 08/382,906, filed February 3, 1995, and now U.S. Patent No. 5,716,260, issued on February 10, 1998, more than two (2) years before the instant pending nonprovisional application was filed.

Therefore, copendency does not exist between the instant application and the application for which the benefit is sought. See, 37 CFR 1.78(a)(1) and MPEP 1481.

Moreover, Applicant seeks to amend the above-identified application to include a priority claim for application number 08/382,906, filed February 3, 1995, and now U.S. Patent No. 5,716,260, issued on February 10, 1998, as a continuation-in-part ("CIP") of application number 08/382,293, filed February 1, 1995, now abandoned; however, a review of application 08/382,906, reveals that it does not contain a priority claim to application 08/382,293.

Accordingly, application number 08/382,906 must be corrected to reflect the priority claim as a CIP to application 08/382,293. See MPEP 1481.

A review of the priority chain for the above-identified application reveals that the above-identified application is a division of 09/021,106, filed February 10, 1998, now U.S. Patent No. 6,254,462 issued July 3, 2001¹. Application 09/021,106 is a CIP of application number 08/382,906. Correction of application number 08/382,906 must be effected to reflect the priority claim as a CIP to application 08/382,293, before the above-identified application may be amended to reflect the priority claim of application number 08/382,906 as a CIP to application 08/382,293.

Telephone inquiries concerning this matter should be directed to Attorney Derek L. Woods at (571) 272-3232.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

¹This application has not been included in Applicant's Amendment filed with the instant petition as part of the priority chain.

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Attorney
Derek L. Woods at (571) 272-3232.

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks
Lead Paralegal
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy